

Challenges of International Cooperation in a World of Increasing Dual Nationality

Rey Koslowski

To appear in Kay Hailbronner and David Martin, eds., *Rights and Duties of Dual Nationals: Evolution and Prospects* (Kluwer Law Publishers, 2003).

Acknowledgements: I am very grateful to the Center for German and European Studies at Georgetown University for a fellowship that supported the initial research for this chapter. I thank all of the project participants and, in particular, the editors, Kay Hailbronner and David Martin, as well as the commentator on my paper, Phil Martin, for their helpful comments and suggestions.

Author contact info:

Rey Koslowski
Assistant Professor of Political Science
Rutgers University-Newark
Rutgers University-Newark
University Heights
Newark, New Jersey 07102
Tel: 973-353-5048
Fax: 973-353-5103
email: rkoslowski@earthlink.net

Introduction

Comparative analysis is necessary to better understand dual nationality and the state policies that lead to its occurrence or prevention. Multiple nationality, however, is primarily a function of the interaction of the nationality policies of two or more states and its prevention has, historically, involved international cooperation, whether on a bilateral or multilateral basis. This paper goes beyond comparative analysis and considers dual nationality from an international relations perspective with a view towards international cooperation, or the lack thereof.

Most states have not, in principle, endorsed dual nationality and some states have entered into multilateral agreements aimed at international cooperation on naturalization and expatriation policies in order to minimize its occurrence. The development of a set of international legal norms against dual nationality over the past century helped delineate what parts of the world's population belonged to which states – they in effect grounded a "demographic boundary maintenance regime" (see Koslowski 1998; 2000, ch. 7). More and more states, however, are changing their laws to explicitly permit dual nationality (e.g., Turkey and Mexico) and other states whose laws ostensibly forbid dual nationality have often tolerated it in practice (e.g., the United States and Germany). Although some commentators and policymakers have argued for reversing this trend and taking measures to restrict dual nationality, unilateral attempts to prevent dual nationality are more difficult to put into effect than they might first appear. Therefore, without international cooperation to reduce cases of dual nationality, the numbers of dual nationals will increase. Without international cooperation to deal with the side effects of dual nationality, growing numbers of dual nationals may increase the likelihood of the legal and political conflicts between states that had prompted international cooperation to reduce dual nationality in the first place. I will make these arguments in three steps:

First, I will describe the development of the demographic boundary maintenance regime based on international norms against dual nationality and the contemporary breakdown of this regime through defection by states that are now tolerating, or even actively embracing, dual nationality. Second, I will elaborate on why unilateral efforts to stem dual nationality will not work by comparing the situations of Germany and Turkey to that of the United States and Mexico. Third, I will turn to the policy challenges presented by increasing cases of dual nationality as they relate to the future of international cooperation, specifically addressing multiple military obligations, economic globalization and the commodification of citizenship, and double voting.

International Cooperation to Reduce Cases of Dual Nationality

Individuals may acquire dual nationality at birth, through marriage, by claiming ancestral lineage or through naturalization. Conflicts of laws among states regarding nationality are rooted in differing principles governing nationality. As modern nationality laws developed throughout the 19th and early 20th centuries, states adopted either the *jus sanguinis* (ancestral lineage) or the *jus soli* (birthplace) principle, thereby delineating which inhabitants of the state were citizens. Since both *jus sanguinis* and *jus soli* were internationally recognized as legitimate principles for the ascription of nationality, it meant that cases of dual nationality would be unavoidable (e.g. when a national from a *jus sanguinis* state has a child in a *jus soli* state).

Dual nationality has historically led to serious international disputes and even military conflict. Following the doctrine of “perpetual allegiance,” Great Britain considered naturalized American sailors born in Great Britain to be subjects of the British crown and impressed them into military service, thereby, triggering the War of 1812. When emigrants naturalized and

became United States citizens, they often found themselves possessing two nationalities and two sets of military obligations. France, Spain, Prussia and other German states routinely drafted naturalized Americans when they visited their homelands.

Much as the problem of multiple military obligations associated with dual nationality was a central issue in U.S.-British relations at the outset of the 19th century, it became a major issue in U.S. relations with the German states in the latter half of the 19th century and a preoccupation of George Bancroft, the German-educated historian who became the first U.S. Ambassador to the North German Federation in 1867. Bancroft argued that states should “as soon tolerate a man with two wives as a man with two countries; as soon bear with polygamy as that state of double allegiance which common sense so repudiates that it has not even coined a word to express it” (Bancroft 1849). As the US Ambassador in Berlin, he negotiated a treaty in 1868 with the North German Confederation in which United States naturalization was recognized and German nationals secured a limited right of expatriation. After five years residence abroad, nationals of the North German Federation could renounce their nationality and naturalize to the United States. However, the United States accepted the German prerogative to consider that naturalization null and void should a German who naturalized in the U.S. return to Germany and live there for more than two years. Conservatives in the Prussian War and Interior Departments attempted to stop Bancroft’s proposed treaty by burying it in red tape. Bancroft publicly commended the egalitarian nature of the Prussian Army in order to win over supporters and he managed to strike up a good working relationship with Bismark, who headed off bureaucratic obstacles and secured the King’s acceptance. In recognition of Bismark’s intercession, Bancroft remarked that everyone had taken “a large and liberal view of the case” (Quoted in Handlin 1984, p. 279).

Soon thereafter, the Grand Duchy of Baden, Bavaria, the Kingdom of Wurtemberg, and the Grand Duchy of Hesse all concluded similar bilateral treaties with the United States (Flournoy and Hudson 1929, 660-667). Additional bilateral treaties recognizing U.S. naturalization and limiting dual nationality were negotiated between the U.S. and Great Britain, Austria-Hungary, Belgium, Denmark, Norway and Sweden during last few decades of the 19th Century (Bar-Yaacov 1961, 163-66). In total, the U.S. entered into 26 such bilateral agreements, which collectively became known as the “Bancroft Treaties.” Although most major sending states entered into agreements with the U.S., some states continued to draft naturalized American citizens when they returned to their country of origin, as, for example, Italy and Switzerland did during World War I.

The proliferation of bilateral treaties regarding nationality during the latter half of the 19th century accumulated into a set of norms against dual nationality in customary international law. The project of codifying customary international rules began in 1925 when the League of Nations began to prepare for an International Codification Conference. The continuing conflicts between states over their nationals during WWI helped raise the issue of the regulation of nationality to become the first of three areas under consideration and the U.S. delegation put forward a draft convention with rules to minimize dual nationality (Harvard Law School 1929). The conference produced the 1930 Hague Convention on Certain Questions relating to the Conflict of Nationality Laws¹ which stated, “it is in the interest of the international community to secure that all members should recognize that every person should have a nationality and should have one nationality only” (League of Nations 1930, preamble). Although U.S. delegation was

¹ as well as an additional three protocols: one dealing with “Military Obligations in Certain Cases of Double Nationality” (League of Nations 1930a); one regulating “Statelessness” (League of Nations 1930b); and one dealing with a “Certain Case of Statelessness” (League of Nations 1930c).

largely responsible for drafting the convention, the U.S. did not sign it because other states would not accept the principle of that a married woman's nationality should not be governed by that of her husband (Gettys 1934). Continuing the project of codifying international customary law after WWII, the United Nations' International Law Commission drafted a Convention relating to the Statelessness of Persons in 1954 and a Convention on the Reduction of Statelessness in 1961. In the post WWII era, states take on a duty to extend nationality to those who would otherwise be stateless: "All persons are entitled to possess one nationality, but one nationality only." (ILC 1954)

For the most part, however, postwar international cooperation to reduce dual nationality by treaty moved from worldwide to regional efforts, most extensively in Europe. According to the Council of Europe's "Convention on the Reduction of Cases of Multiple Nationality" (Council of Europe 1963) a national of one participating state who gains the nationality of another should lose his or her previous nationality and an individual with nationalities of two participating states should be able to renounce one state's nationality. France, Austria, Denmark, Germany, Italy, Norway, Luxembourg, Sweden and the Netherlands ratified the Convention while the United Kingdom, Ireland and Spain agreed only to Chapter II of the Convention, "Military Obligations in Cases of Multiple Nationality."

International norms against statelessness and dual nationality helped establish an international system of nation-states by delineating its parts in terms of population. Just as states conclude border treaties that delineate their jurisdiction geographically, states delineate their jurisdiction demographically. Just as multilateral boundary conventions provide international rules for delineating geographic borders, states have entered into multilateral conventions on statelessness and dual nationality in order to both legitimate their competencies over defined

jurisdictions and to minimize conflicts. These multilateral efforts reduced the number of cases of statelessness and dual nationality and instituted a regime for the resolution of conflicts over the remaining cases.

As long as the number of remaining cases that persist stays relatively small, conflicts of nationality law can be marginalized in relations among states given that the consequences of statelessness and dual nationality are ultimately borne by individuals, whose interests can all too easily be disregarded should they conflict with the interests of the states concerned. Increased international migration places pressure on this demographic boundary maintenance regime of the states system by increasing the number of people who find themselves caught between two states and suffering adverse consequences because of it. In conjunction with increasing migration, many states have recently relaxed their policies on renunciation of previous citizenship for resident aliens who naturalize as well as on automatic expatriation of their nationals who naturalize elsewhere. Such policy changes have undermined the international regime dedicated to reducing cases of dual nationality.

The trend toward increasing toleration of dual nationality is enabled by international security factors such as post-war European integration, North Atlantic security structures, the end of the Cold War, and the decline of conscription (Koslowski 2000a). Increasing dual nationality, however, is primarily the result of domestic politics that have led to unilateral defections from the international demographic boundary maintenance regime.

Perhaps the most important factor for increasing cases of dual nationality is the post-war rise of women's movements (Hammar 1985). In the development of nationality law in the 19th and early 20th centuries, states that followed the principle of *jus sanguinis* generally followed the additional practice of paterlineal ascription. That is, legitimate children received the father's

nationality, illegitimate children received the mother's nationality. This practice reduced the number of dual nationals because the child of a marriage between nationals of two *jus sanguinis* states would then have the father's nationality and, if born out of wed-lock, the mother's – but not both. Essentially, the pervasiveness of paterlineal ascription yielded an informal coordination game among states. Nevertheless, in response to widening women's suffrage and subsequent movements for equal treatment of women under the law, many states gradually abandoned paterlineal ascription in favor of gender equality in the transmission of nationality to children. The more states that ascribe their nationality to children of mixed marriages, regardless of the citizen parent's gender, the greater the possibilities that children of mixed marriages will be born with dual nationality. The increase in dual nationality in such circumstances is the unintentional outcome of declining informal international coordination of nationality laws.

Another domestic political factor is primarily operative in migrant sending states such as Columbia, the Dominican Republic, Ecuador, Turkey, Italy and Mexico, which recently began to permit emigrants to maintain their nationality after naturalizing to another state. Most of these sending states changed their policies in large measure due to the lobbying of emigrants who wish to retire or invest in the homeland and as a means of retaining emigrants' political identification. In many cases, sending states are permitting dual nationality among their emigrants in the hope that, as citizens of host countries, they might form stronger ethnic lobbies that can work to change host country foreign policies in favor of the home states' interests (Dillon 1996; Oezdemir 1996).

Similarly, historic sending countries of Europe often maintained post-colonial ties by explicit agreements on dual nationality with former colonies or through more informal toleration of the practice. For example, in 1949 the United Kingdom changed its law to permit dual

nationality, thereby permitting its nationals to gain the nationality of Canada, Australia and New Zealand after these former colonies established their own citizenship laws (Goldstein and Piazza, 1996, 521). Between 1958 and 1969 Spain negotiated a series of bilateral agreements permitting dual nationality for nationals of Chile, Peru, Paraguay, Nicaragua, Guatemala, Bolivia, Ecuador, Costa Rica, Honduras, the Dominican Republic and Argentina (Council of Europe 1997).

New states emerging from the collapse of the Soviet Union and Yugoslavia also opted to permit dual nationality, if only as a possibility for emigrants and their descendants. As the Soviet Union collapsed, 25 million Russians found themselves outside of Russia. Russian politicians quickly championed the cause of Russians in the “near abroad” and insured that the new Russian citizenship law permitted dual nationality (Council of Europe 1997, 142).

Members of the “Croatian nation” that do not reside in Croatia may acquire Croatian nationality without renouncing their existing nationality and Slovenia permits dual nationality for Slovenians who naturalize elsewhere (Council of Europe 1997, 30, 151).

Another domestic political factor is primarily operative in states experiencing net immigration, i.e., receiving or host states. Many receiving states have relaxed their prohibitions on dual nationality in order to facilitate political incorporation. In 1977, Canada changed its law to explicitly permit dual nationality for immigrants who naturalize as well as for Canadian nationals who naturalized elsewhere. Australia does not require renunciation of previous citizenship for those who naturalize, however, Australians who naturalize elsewhere automatically lose their Australian nationality.² The U.S. government officially “discourages” dual nationality but permits it in practice because it is restrained by Supreme Court decisions striking down involuntary expatriation as a violation of the 14th Amendment. Also, naturalized

Americans routinely keep their previous nationalities and passports because the renunciation clause of the oath of allegiance is not strictly enforced (Goldstein and Piazza 1996, Spiro 1997). Switzerland stopped requiring renunciation of previous nationality of those who naturalize in 1990 (OECD 1995, 163, 165) and the Netherlands changed its policies in 1991 so as to permit those who naturalize to retain their previous nationalities in certain circumstances (Council of Europe 1996, 22). Since France only requires renunciation by naturalization applicants from states who have signed the 1963 Convention nationals and this group is a small fraction of the French immigrant population, well over a million naturalized French citizens maintain dual nationality (Hammar 1990, 111). Germany has tolerated dual nationality among ethnic Germans from Eastern Europe and Russia, children of mixed marriages, and draft age foreigners, if the home country requires military service in order to be released from its nationality. Already in 1995, Cornelia Schmalz-Jacobsen, the former Federal Government's Commissioner for Foreigners' Affairs, estimated that there were over 2 million German citizens with dual nationality (TWIG 1995). As of January 1, 2000, dual nationality is permitted for children born in Germany of foreign parents, however, they must chose between German nationality and their other nationality by the time they become 23 years old.

States have also enacted polices that have indirectly led to increased dual nationality through increasing the economic value of their nationality and thereby instilling a reluctance among emigrants to give up that nationality (and/or encouraging immigrants to take on a second nationality). Philip Martin has argued that there would be less incentive for people to acquire two nationalities if states did not discriminate in favor of nationals by limiting property and

² In February 2000, Australian Citizenship Council released its report, which strongly recommended repeal of this provision of Australia's citizenship law.

inheritance rights of non-nationals.³ For example, until recently, Turkish emigrants who naturalized in Germany lost inheritance and rural property rights in Turkey. Similarly, Mexico does not permit foreigners (including Mexicans who have renounced their nationality) to own land within 100 kilometers of its border and 50 kilometers of the coast. Due to such laws, emigrants, who hope (however unrealistically) that they will someday return home to retire, are very reluctant to give up these property rights along with their nationality. Hence, if dual nationality is discouraged by either the sending or receiving states involved but nevertheless possible, many such migrants will pursue the dual nationality option rather than simply naturalizing and giving up his or her first nationality and the property rights that go with it. Similarly, by limiting property rights or other economic benefits to nationals, receiving countries may encourage naturalization. For example, the expansion of migrants' civil and social rights in the states in which they reside led some scholars to speak of the "devaluation of citizenship" given that the possession of a state's nationality is no longer necessary to enjoy many of the rights of citizenship (Schuck 1989). In the United States, however, the 1996 welfare reform denied benefits to legal permanent residents and therefore led to a reevaluation of citizenship (Schuck 1998), which subsequently spurred record-setting naturalization rates. If a migrant's home country retains property rights laws that encourage retention of nationality while his or her host country enacts laws that encourage naturalization by limiting economic benefits, dual nationality can become the migrant's most rational economic choice, which, ironically, is imposed conjointly by the states to which he or she belongs.

Although international norms intended to decrease cases of dual nationality had been most fully developed within the Council of Europe, by the beginning of the 1990s it became

³ Comments made at *Managing Dual Nationality*, Mexico City, February 2000.

clear that increasing migration had put them under significant pressure (Hailbronner 1992, 92-98). Changing nationality laws, evasive treaty interpretations and contradictory administrative practices on the part of European states undermined these norms and have led to the deterioration of Europe's demographic boundary maintenance regime (for elaboration, see Koslowski 1998; 2000, ch. 7). In 1997, the Council of Europe's Committee of Ministers adopted a new "European Convention on Nationality" that allows states to permit dual nationality or not to permit it, require renunciation or not require it.⁴ Nevertheless, the new convention does not abrogate treaty commitments made in 1963 (Council of Europe 1997b), most signatory states retain prohibitions against dual nationality in their nationality laws and most EU member states still required renunciation of first nationality by naturalization applicants in November 1997 when the European Convention on Nationality was signed (Netherlands changed its policy back to requiring renunciation on October 1 1997⁵). As Germany relaxes its renunciation requirements, however, whatever is left of the international norm against dual nationality in Europe becomes a somewhat moot point as an overwhelming majority of Europe's population of resident aliens will become able to maintain a second nationality.

The Limits of Unilateral Action Against Dual Nationality

The decline of such international cooperation produces increasing numbers of dual nationals and unilateral measures by individual states are unlikely to halt this trend. Some commentators and policy makers in receiving states may view dual nationality as an abomination of dual loyalty (much as George Bancroft did), however; their efforts to legislate dual nationality

⁴ Council of Europe 1997a. As of October 1, 2000, 21 member states have signed the Convention and three have ratified it. The convention went into force March 1, 2000. See Council of Europe, European Treaties, Chart of Signatures and Ratifications, <http://conventions.coe.int/treaty/EN/cadreprincipal.htm>

out of existence may come to naught. Just as it took international cooperation between the migrant-receiving United States and the migrant-sending North German Confederation to reduce dual nationality among German immigrants to the U.S., if the U.S. government would again attempt to limit dual nationality among its naturalized citizens, it would need the cooperation of Mexico and other sending states.

Mexicans who naturalize to the United States and elsewhere may now keep their Mexican nationality and naturalized Americans may reclaim their Mexican nationality. Though new American citizens swear to “renounce and abjure absolutely and entirely all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty” at their naturalization ceremony, renunciation is not enforced as a requirement of naturalization. Raising the specter of multiple loyalties, editorialists and immigration reform advocates argue that naturalized American citizens should relinquish their first nationality and hand over their passports (See, e.g. Geyer 1996). This “get tough” policy will not necessarily reduce the number of dual nationals, as recent German experience demonstrates.

Germany has required renunciation of previous nationality in order to naturalize. Still, growing numbers of naturalized Germans became dual nationals, especially those from Germany’s largest migrant community -- its two million Turkish nationals. Germany’s renunciation policy includes loopholes permitting dual nationality for foreigners whose country of origin arbitrarily refuses release of previous nationality or, in the case of draft age foreigners who received the majority of their schooling in Germany, if the home country requires military service in order to be released from its nationality. These loopholes meant that dual nationality was tolerated in 13, 082 of 29,108 discretionary naturalizations (44.9%) in 1993

⁵ Dual nationality would be permitted in only a very limited number of cases (Muus 1998).

(*Auslaenderbeauftragte* 1997, 33). Moreover, after years of urging Germany to permit dual nationality, Turkey changed its laws in 1995 to permit emigrants who renounce their nationality for purposes of naturalization to reapply shortly thereafter (See Rumpf 2000).⁶ Given that dual nationality was tolerated for over a third of the Turks who naturalized in 1995 (*Auslaenderbeauftragte* 1997, 32), and that those who did renounce their Turkish nationality were permitted to get it back, it is fair to say that a majority of the Turks who naturalized in 1995 most likely now have both German and Turkish nationality.

Even if the U.S. followed Germany's example and strictly enforced the renunciation oath, it would not necessarily reduce the number of dual nationals. Since Mexico now permits those who previously renounced their nationality to reclaim it, Mexico, like Turkey, could simply provide evidence of renunciation to naturalization applicants, then restore Mexican nationality to the newly naturalized Americans and issue new passports to them.

It is Mexico's sovereign right to permit its nationals to keep their Mexican nationality after they naturalize elsewhere -- much as it is the United States' right to permit Americans who acquire another nationality to maintain U.S. nationality. The U.S. government "discourages" dual nationality but permits it in practice because it is restrained by Supreme Court decisions striking down involuntary expatriation as a violation of the 14th Amendment. Americans may only lose their nationality if they *voluntarily* obtain another nationality with the *specific intention* of relinquishing U.S. nationality. Simply taking a *pro forma* oath of allegiance to another state does not constitute intent -- nor, for that matter, does voting or military service.

Americans often get a second nationality for easier travel on another passport and to gain access to business, investment and employment opportunities for which citizenship is required.

⁶ See also the Turkish Embassy webpage, consular information for Turkish citizens <http://turkey.org/cons3e.htm>

For example, a student of mine with an Irish-born grandparent obtained Irish nationality and European Union citizenship. This enabled him to take a job in Austria.

By expatriating all those who take on another nationality, the U.S. government could stop naturalized Americans from becoming dual nationals by reclaiming their Mexican nationality. Given that involuntary expatriation violates the 14th Amendment, such a policy could run into constitutional difficulties. Moreover, such a policy would entail not only expatriating Mexicans who had naturalized to the U.S. but also all naturalized Americans who have reclaimed their previous nationality and, if the policy were not to discriminate between native-born and naturalized citizens, native-born Americans who have acquired a second nationality – such as my Irish-American student and the many other native-born Americans who have used dual nationality to further their careers and businesses. Hence, Congressional proposals for expatriating all Americans who get a second nationality would most likely run afoul of several politically powerful constituencies. Expatriation legislation that only applies to naturalized Americans could easily be cast as a form of discrimination against immigrants in general and most likely become a political rallying point for ethnic groups and civil libertarians alike. In a period marked by both Democratic and Republican Parties appealing for the Hispanic vote, such legislation is not very the viable.

Of course, the INS could revoke the citizenship of a naturalized U.S. citizen who reacquires Mexican nationality by contending that his or her oath of allegiance was fraudulent because he or she intended to reacquire Mexican nationality. It would be difficult to make this argument for Mexicans who naturalized to the United States before Mexico changed its constitution in 1996 to permit them to reacquire Mexican nationality. For that matter, it would be difficult to make this argument for those who applied for U.S. citizenship before the new

Mexican law went into effect. Moreover, it would seem awkward (if not inconsistent) to revoke the U.S. citizenship of someone who acquires Mexican nationality but allow that same person to keep his or her U.S. citizenship if he or she were to acquire any other nationality (e.g. Irish nationality by virtue of having an Irish born grandparent or Belizian nationality through an economic citizenship program). Finally, this policy would be difficult to execute without the cooperation of the Mexican government, as the following analysis of German efforts to enact such a policy demonstrates.

While some U.S. immigration reform advocates have viewed Germany's ostensibly strict policies against dual nationality as a model to emulate, Germany has loosened its renunciation requirement by adopting additional grounds for tolerating dual nationality in new Nationality Law which went into effect in 2000. The German government has also responded to the 1995 Turkish law that permitted reacquisition of Turkish nationality by changing expatriation rules in the new Nationality Law. Before 2000, involuntary expatriation of a German citizen residing in Germany was not permitted. Now, a German national who wishes to retain his or her nationality after naturalizing elsewhere can apply for a certificate permitting dual nationality, which is generally granted if the applicant can provide proof of continuing ties with Germany.⁷

⁷ According to Section 25 of the Nationality Act, "(1) A German shall lose his citizenship upon the acquisition of a foreign citizenship where such acquisition results from his application or from the application of the husband or of the legal representative. The wife and the person represented however shall only suffer such loss where the requirements are met which under section 19 permit the making of an application for release. (2) Citizenship shall not be lost by any person who before acquisition of the foreign citizenship has received upon his application the written approval of the competent authority of his state of origin for retention of his citizenship. Before the granting of the approval the German consul shall be heard. In taking the decision pursuant to the first sentence there shall be a weighing of the public and private interests. In the case of an applicant normally resident abroad special consideration shall be given to whether he can show convincing proof of continuing ties with Germany." This act has been interpreted in the following way in a publication produced by the Germany Embassy in Washington: "Already under the previous citizenship and naturalization laws, it was possible to retain German citizenship, provided strict requirements were met. However, in the interest of avoiding dual citizenship, the provision was interpreted very narrowly. The new provision largely does away with the former strict criteria, thus making it considerably easier for Germans to retain their German citizenship. The main requirement is that applicants must be able to credibly show that they still have continuing ties to Germany. This could consist of ongoing relationships to close relatives living in Germany, existing ownership of real estate in Germany, or pension or insurance claims. Furthermore, a pledge of allegiance (as is required in the U.S. for naturalization) shall in future no longer stand in

Nevertheless, application for such a certificate provides a degree of administrative discretion available to address the dilemma posed by states (such as Turkey and Mexico) that allow their citizens who naturalize in Germany to regain their original nationality. That is, native-born Germans who naturalize elsewhere (e.g., to the United States) may be able to keep their German nationality, while naturalized Germans who wish to regain their former Turkish nationality may not be given the certificate necessary to keep their German nationality.

In theory, this provision should be able to counter certain sending country policies aimed at facilitating dual nationality among their nationals who naturalize to Germany. However, unequal treatment of native and naturalized citizens may violate Article 5 of the 1997 Council of Europe Nationality Convention (which the present German government seems inclined to sign).⁸ More importantly, it would be very difficult for German authorities to find out whether or not a naturalized German had in fact reacquired Turkish nationality if Turkish authorities did not inform them. It would make little sense for the Turkish government to furnish this information since the provision for reacquisition of Turkish nationality was (at least partially) intended to facilitate emigrant naturalization in their host countries. In effect, German efforts to limit dual nationality among Turkish nationals who naturalize to Germany would require significant cooperation from the Turkish government. Without Turkish cooperation, it is unlikely that the German government's efforts to expatriate naturalized Germans will significantly reduce the number of German-Turkish dual nationals.

the way of issuing a certificate approving retention of German citizenship if the foreign country has a governmental and social order comparable to that of the Federal Republic of Germany. This applies in particular to Germans living in the United States who wish to acquire U.S. citizenship." http://www.germany-info.org/newcontent/np/np_3c_1.html.

⁸ Section 2 states, "Each State Party shall be guided by the principle of non-discrimination between its nationals, whether they are nationals by birth or have acquired its nationality subsequently." For elaboration on this point see de Groot, 2000

Moreover, Germany's new Nationality Law has expanded the grounds for "difficult conditions" under which those naturalizing to Germany will not be required to give up their first nationality. These new loopholes apply to older persons for which renunciation would present particular hardships, to those for which giving up their first nationality would bring considerable disadvantages, particularly of an economic or financial kind, and those suffering political persecution.⁹ In light of these exceptions, sending states that wished to promote their emigrants' naturalization to Germany could, hypothetically, change their laws and policies (e.g., by placing a tax on those who renounce their nationality in order to recoup schooling costs) so that their emigrants could fall under one of these hardship categories. The point here is that the practical effect of receiving state policies toward dual nationality depends very much on the policies of sending states.

Generally speaking, if states are not also willing to expatriate their own nationals who gain another nationality, simply requiring those who naturalize to renounce their former nationality will not necessarily reduce the number of dual nationals. Expatriation, however, may be politically, if not constitutionally, difficult for democratic countries to enforce. Even if such expatriation provisions are legally tenable and even if their enabling legislation is politically feasible, their execution may not be administratively possible. Hence, despite the desires of some commentators and policymakers, the number of dual nationals, worldwide, will most likely increase in the future.

⁹ Aliens Act, Section 87, 1.

Policy Challenges

If international norms against dual nationality are eroding and unilateral efforts to restrict dual nationality are not feasible, what are the specific policy challenges of a world of increasing dual nationality? What are the implications for international cooperation?

Multiple Military Obligations

The most immediately apparent issue is in the area of international security – increasing cases of dual nationality means overlapping pools for state conscription of military manpower. The problem of multiple military obligations is, to a certain extent, relieved by the decline of war between states (especially among established democracies), the development of security communities, and the trend toward professional armies in advanced industrialized countries (Koslowski 2000a). Nevertheless, as norms against dual nationality decline and the number of dual nationals increases, old problems of multiple military obligations have resurfaced.

For example in 1995, several young men from the Opole region of southwestern Poland responded to their draft notices with documentation that they had served in Germany's *Bundeswehr*. Since it is against Polish law for Polish citizens to serve in another military without Poland's permission, the case was referred to the Opole prosecutor's office. The prosecutor and the regional military authorities dropped the case, indicating that the harm done was minor. According to the German Consul in Wroclaw, in mid-1995 there were approximately 60,000 Polish nationals in the Opole region who also had German nationality (PAP 1995). Polish military authorities do not have data on how many of these Polish-German dual nationals actually served in the *Bundeswehr*, however, Polish officers have speculated that it may be many because the Opole region had Poland's lowest percentage of recruits reporting for duty and the highest rate of proceedings against draft dodgers (Gazeta Wyborcza 1995). As

such cases have persisted and increased, Polish authorities have not accepted previous military service in Germany as an excuse from the Polish draft.¹⁰ Although the new Polish citizenship law enables the restoration of citizenship to Poles who served in the U.S. French and British Armies after WWII, enlisting in a foreign army today is treated as a crime (Szymborski 2000).

In addition to multiple military obligations, dual nationals may be subject to other sanctions by one of the states to which they belong for military service to the other. The growing phenomenon of civil wars in the homelands of emigrants compounds the complexities of such situations. For example, during the Kosovo War, Canadian citizens who had immigrated from Albania or Kosovo (or who descended from Albanian immigrants) went to Kosovo to fight the Yugoslav Army. At the time, the Royal Canadian Mounted Police considered prosecuting these Canadian citizens under the "Foreign Enlistment Act" (see Thompson 1999). Similar concerns were raised about Serbian-Canadians. According to the Foreign Enlistment Act it is a crime for a Canadian citizen to enlist or accept any commission to fight in the armed forces of any foreign state at war with Canada or one of its allies. Given that Canadian forces entering Kosovo would be exposed to potential hostilities with Serbian troops or be involved in the forceful disarming of the Kosovo Liberation Army (KLA), Canadian citizens who volunteered to serve on either the Serbian or Kosovar side of the conflict were not only possibly in violation of Canadian law but they could also potentially face combat with their fellow citizens. The Royal Canadian Mounted Police eventually decided not prosecute Canadian citizens who enlisted in the KLA and fought in the Yugoslav Army, however, Canadian citizens who committed atrocities would still be subject to charges brought up by War Crimes Tribunals (National Post 1999).

¹⁰ This point was made by Mahulena Hoffman at the German Marshall Fund Project on Dual Nationality meeting in Istanbul, October 20-21, 2000.

While the decline of war between states and conscription by state has reduced the problem of multiple military obligations, the number of wars within states has been increasing (e.g. break-up of Yugoslavia), which raises analogous problems regarding military service. These civil wars often coincide with the democratization and self-determination which had been unleashed by the end of the Cold-War (Mansfield and Synder 1995) meaning that democracy is not a simple answer to the scourge of war and that the process of democratization may be much more violent and longer than many had hoped in the early 1990s. Civil wars are not only struggles for the hearts and minds the residents of a country but they also might involve both sides attempting to draft residents into service. For example, there were many young men in Bosnia-Herzegovina of mixed parentage (Croatian mother and Bosnian Muslim father; Serb mother and Croatian father, etc.). When the war broke out, the Serb, Bosnian Muslim and Croat militias that formed attempted to conscript such young men into service. Many fled the country and received temporary protection in Germany and other EU member states.

Of course, there is also the issue of multiple military obligations in the context of a successful movement of self-determination, as for example when Slovenia and Croatia initially seceded from the Yugoslav federation. Until Yugoslavia recognized Slovenia and Croatia as states, those Croatian and Slovenian soldiers who were members of Yugoslav Army before Slovenia and Croatia declared independence may have been subject to military obligations to both the seceding state and Yugoslavia. Indeed, it was this kind of problem – when Great Britain did not recognize U.S. citizenship after the American Revolution - that precipitated the War of 1812.

States could set up frameworks for international cooperation in order to head off potential conflicts between states over cases of multiple military obligations. Increasing international

cooperation is evident, for example, in the detailed provisions of Chapter VII of the 1997 Convention on Nationality (Council of Europe 1997b) which stipulate that individuals need to fulfill military obligations of only one state party, provide rules for determining which state military obligations are owed to (Art. 21) and give guidance on exemptions from military service or alternate civil service (Art 22).

What is particularly significant about the 1997 Convention is that the scope of participation has widened with the expansion of the Council of Europe and the Convention is even open to signature by non-members. Albania, Bulgaria, the Czech Republic, Hungary, Moldova, Poland, Romania, Russia, Slovakia and the former Yugoslav Republic of Macedonia have already signed the convention in addition to several West European states. Former adversaries from opposite sides of the Iron Curtain have agreed to rules governing a major expression of political loyalty, formerly a prime site of the ideological conflicts of the Cold War. Interestingly, the Council of Europe Convention on Nationality is also open to non-member states, which participated in its elaboration, such as the U.S. and Canada. Should the U.S., Canada and other non-European states also sign and ratify this convention together with their European partners, it would not only reinforce the notion that the post-Cold War world is indeed becoming a safer place, it would also be a stride toward establishing an international regime that could make the world a bit safer for dual nationals.

Ultimately, however, the specter of widespread cases of multiple military obligations could reemerge if increasing international tensions prompt more states to reinstate conscription. It would be for such a contingency that international cooperation on rules governing multiple military obligations in cases of dual nationality could potentially play a more significant role in the continuation of peaceful international relations. While such an international regime could

play a role in pre-empting and reducing conflicts between states, in a world in which violent conflicts are increasingly taking place within states, rather than between them, such traditional state-to-state international cooperation may not be sufficient for addressing present-day realities of conscription. New modalities of global governance that include sub-national political authorities and non-state actors may be necessary to adequately address the problems of multiple military obligations in the future.

Economic Globalization

A more lenient regime permitting dual nationality may also have a significant impact on the globalization of the world economy. Changing international norms and state practices facilitate the development of a global economic elite, some of whom obtain second nationalities in order to avoid taxes, conceal international movement and ease travel.

Individuals often view dual nationality in utilitarian terms of having a second passport for gaining access to business and employment opportunities for which citizenship is required. Several states offer “economic citizenship” programs (routinely advertised in business magazines like the *Economist*) to those who are in the market for a second passport. For example, Dominica sells its citizenship for a cash contribution of \$50,000.¹¹ In one year, Dominica sold 68 passports for \$3.5 million – half to Russians or nationals for other Soviet successor states, over twenty to Chinese and Taiwanese and about a dozen to Americans (Fineman 1997). Wealthy Russians maintain that they do not want immigration officials to know about their international movements and investments because such information is sold by corrupt officials to criminals who use it for extortion. Taiwanese and Chinese dual nationals use their second passports to circumvent strict visa requirements in the West (for example, the U.K. and Canada

¹¹ For details on Dominica’s Economic Citizenship Programme, see <http://caribcats.com/citizenship.htm>.

require no visas for bearers of Dominican passports¹²). Americans primarily use their Dominican nationality to reduce or avoid taxes (see Fineman 1997). St. Kitts and Nevis,¹³ the Cape Verde Islands, Grenada¹⁴ and Belize¹⁵ offer similar programs while Ireland and Portugal have offered investment-linked citizenship programs in the past (O’Nes 1990; Starchild 1993). Some states do not sell their citizenship outright, however, countries such as Panama, Paraguay and the Dominican Republic offer residency programs that provide permanent resident status with the option to naturalize without full-time residence.¹⁶

Second nationalities have been used to foil efforts of the U.S. Internal Revenue Service (I.R.S.) to tax the earnings of U.S. nationals living abroad. The United States is one of the few countries that taxes income of its citizens earned abroad. Since U.S. nationals who renew their passports at U.S. embassies must provide their social security numbers, the I.R.S. took this opportunity to check the tax status of expatriates who were suspected of tax evasion. Americans living abroad have countered this tactic by not renewing their passports and traveling on passports acquired through economic citizenship programs (Gallo 1999). If they wish to return to the U.S. (and acquire a U.S. passport), second passports from Dominica, Grenada, St. Kitts and Nevis permit visa-free travel to Canada,¹⁷ from which it is relatively easy to cross into the U.S. with a U.S. driver’s license.

¹² See Dominica’s Economic Citizenship program at: <http://caribeats.com/citizenship.htm>; U.K.’s list of countries that require visas at: http://www.homeoffice.gov.uk/ind/to_the_uk/to_the_uk_visa.html#VisaNationals; Canada’s list of countries that do not require visas at: http://www.cic.gc.ca/english/visit/visas_e.html#exemptions

¹³ See <http://www.stkittsnevis.net/invest/citizenship.htm>

¹⁴ See http://www.escapeartist.com/Grenadian_Second_Passport/overview.html

¹⁵ See http://beltraide.belizeinvest.org.bz/act_citizen.shtml

¹⁶ See, e.g. <http://www.secondresidency.com/> and http://www.escapeartist.com/efam9/Dominican_Residency.html

¹⁷ See “visitor visa exemptions,” http://www.cic.gc.ca/english/visit/visas_e.html#exemptions

In an effort to evade taxes, some rich Americans have resorted to renouncing their U.S. citizenship altogether (even though U.S. still imposes taxes on its former citizens¹⁸) and additional citizenships become particularly useful to execute this tax evasion strategy. David Lesperance, Barrister & Solicitor (as well as former immigration official) has advocated that individuals establish a “passport portfolio” much as they would a portfolio of investments (Lesperance 1999). Lesperance offers an example of a wealthy American citizen, “William Goates III,” who by acquiring the citizenship of Grenada and permanent residency in Canada, could eventually become a dual national of Grenada and Canada within three years of acquiring Canadian residency and then renounce U.S. citizenship. He could then not only evade U.S. taxes¹⁹ but also circumvent high Canadian taxes. Canada does not impose income and capital gain tax on non-Canadian source income and capital gain producing assets and he could use his Grenadan identity documents when opening bank accounts and making investments.

Although not economic citizenship programs per se, some states, such as U.S., Canada, Australia and New Zealand have investor immigrant programs that provide permanent resident status, which enables one to naturalize after a given period of residence. The U.S. offers up to 10,000 immigrant visas per year to people who invest \$1,000,000 in a commercial enterprise that creates employment for at least ten unrelated persons in the United States or invest \$500,000 in rural or high unemployment areas.²⁰ After applicants demonstrate to the INS that their business is not fraudulent, they receive permanent resident status and may naturalize to the United States after five years residence. Despite precautions, abuses of the program occurred after a ruling that permitted visa applicants to meet investment requirements with only a portion of the money in

¹⁸ See http://www.irs.ustreas.gov/prod/forms_pubs/instruct/i8854.html

¹⁹ He would still be subject to taxation for ten years after renunciation. See http://www.irs.ustreas.gov/prod/forms_pubs/instruct/i8854.html

²⁰ See <http://travel.state.gov/visa/immigrants.html>; Roche and Cohn 2000.

cash and the rest on a promissory note or allowed applicants to pool their money in limited partnerships. Certain companies (including some with former high-ranked INS officials) took advantage of these rulings to secure green cards for clients with investments of as little as \$125,000 (Roche and Cohen 2000). Canada has a similar investor immigrant program. It requires that investors provide a minimum investment of \$400,000 and have a minimum net worth of \$800,000.²¹ After living for three years in Canada as a permanent resident, the investor immigrant may apply for Canadian citizenship. Australia has an investment-based immigration program that requires an investment of at least 750,000 Australian dollars.²² New Zealand incorporates investment as a criterion for its point-based immigration policy. An investment of 1 million New Zealand dollars earns 1 point, as does every \$500,000 thereafter.²³ Since Canada, Australia and New Zealand do not require renunciation of nationality to naturalize and the U.S. does not enforce the renunciation in the oath of allegiance, the end effect – Canadian, Australian, New Zealand or U.S. nationality in addition to the investor's original nationality - is the same as economic citizenship programs. The Canadian, Australian, New Zealand and U.S. programs only cost much more and take longer to acquire the second nationality.

Although most European Union member states have not viewed themselves as immigration countries and they have not adopted similar investor programs, the United Kingdom has a long-standing investor visa program. The investor must bring 1 million pounds in assets to the UK and make a 750,000 pound investment in the British economy, which then yields the possibility of permanent residence after four years.²⁴ The German Government has established an all-party commission to consider the development of an immigration policy and the leaders

²¹ See <http://www.cic.gc.ca/english/immigr/ibusiness-e.html>.

²² See <http://www.immi.gov.au/allforms/bus-inv.htm>

²³ See <http://www.immigration.govt.nz/migration/>

within the opposition CDU, such as Friedrich Merz, are now arguing for reforms that would "move the focus of our policy away from those who need us to those whom we need" (quoted in Economist 2000). A prominent economist in Germany, Thomas Strubhaar (2000), has argued for a "New European Migration Policy (NEMP)" that would be modeled after the Canadian point system and could include the auctioning of permanent residence permits.

States not only offer citizenship or permanent residency for an investment of financial capital, some states offer citizenship or permanent residency in order to attract human capital. For example, many European states bestow a second nationality to star athletes, particularly football players, and often so that they could play as members of national teams.²⁵ To fuel the information revolution propelling the growth of their economies, the United States, the United Kingdom and Germany have established special work visa programs to attract highly skilled computer programmers and other information technology professionals. Although these are ostensibly temporary worker programs, many high-tech migrant workers, for example in the United States, apply for and receive permanent resident status which, in turn, makes them eligible for citizenship in five years. The point here is that the exchange of "citizenship" for capital can take a variety of forms and this exchange be located along a continuum between immediate citizenship after providing an investment of as little as \$50,000 to citizenship after years of providing ones knowledge and skills (often at below market value) and applying for temporary residency, permanent residency and citizenship itself.

With economic citizenship programs, states, no matter how small or large, are utilizing their sovereignty to raise revenues and/or attract investments. Some small states use their

²⁴ See http://www.homeoffice.gov.uk/ind/to_the_uk/to_the_uk_2.html

²⁵ This point was made by Gererd-Rene de Groot at the German Marshall Fund Project on Dual Nationality meeting in Istanbul, October 20-21, 2000.

sovereignty to produce passports for people who have no intention of giving up their original nationality much as they generate relatively large revenue streams by producing very attractive postage stamps that are never attached to an envelope but are rather sold directly to stamp collectors. Selling a wide array of postage stamps became increasingly popular among island "micro-states" as growth in official development assistance to developing countries stagnated in the 1980s and declined after the end of the Cold War. Passing bank secrecy laws and selling passports can be viewed as other revenue generating opportunities for resource- poor micro-states that have little to trade with the rest of the world but wish to acquire the hard currency necessary to purchase the foreign goods increasingly desired by their citizens who have been exposed to advertising via the global media.

In essence, sovereignty becomes fungible as states turn citizenship into a commodity. Sovereignty, however, denotes not only the state's supreme law-making and law-enforcing authority in a given territory, but also that such authority is recognized by the other states of the international system (Claude 1966). The question arises as to whether the commodification of citizenship is an acceptable practice among the members of international society. If the practice were limited to only marginal members within the system, those states that adopt this practice may be diplomatically sanctioned. Given that hegemonic states within the system have dabbled in the practice of selling permanent residence permits, the direction of the development of international norms in this area may be in the other direction.

Given such commodification of citizenship, easing policies on dual nationality may accelerate the international movement of capitalists and high skilled labor as well as facilitate the expansion of the offshore banking for personal assets. As nationalities of convenience are combined with the increasing ability to move money electronically and anonymously with the

development of e-cash, even the most sophisticated states will confront increasing obstacles to effective tax collection (Korbin 1997). The OECD (2000) has identified as tax havens many of the same states that offer economic citizenship programs such as Belize, Dominica, Grenada and St. Kitts and Nevis. The commodification of citizenship combined with increased mobility (both of individuals and their capital) may facilitate the development of a global economic elite that is as multinational as the firms for which they work (or that they own).

If wealthy business people, however, can use dual nationality to conceal their international movements, hide their assets from tax authorities and elude border controls, so can those who engage in illegal economic activities like drug smuggling, money laundering, and human smuggling. The growth of transnational crime is keeping pace with economic globalization and transnational criminal organizations are becoming increasingly sophisticated. Wealthy Russians who purchased Dominican passports claim to be doing so in order to hide their comings and goings from corrupt immigration officials on the take of extortionists, however, officials administering Dominica's economic citizenship program admit that they cannot guarantee that all of their Russian customers are not members of criminal organizations who are in fact trying to hide their movements from the Russian police (See Fineman 1997).

Moreover, persons indicted for crimes may also use the nationality of states who do not permit extradition of their nationals in order to find a haven to gain a more advantageous venue for prosecution, to face lighter penalties and better prison conditions or to avoid prosecution altogether. For example, many states do not permit extradition of their citizens who have committed a crime abroad and many of these states also permit dual nationality, including the Dominican Republic, France, Israel and Russia. Indeed, the controversy over Samuel Sheinbein, a Maryland teenager with dual US-Israeli nationality who fled to Israel while being accused of

murder, brought Israeli extradition policy to the center of US-Israeli relations, including a threat by former Rep. Robert Livingston, Chair of the House Appropriations Committee, to “revisit” the foreign aid budgeted for Israel (Newsday 1997).

Given that dual nationality is often the result of states exercising their sovereignty to extend their nationality to whom they wish and to claim jurisdiction over their nationals, the use of dual nationality by individuals to evade the laws of states is an example of how individuals are using the rules generated by the doctrine of state sovereignty against states themselves (see Kerry 1997, pp. 169-170). Moreover, loosening prohibitions against dual nationality will place increasing pressure on furthering international cooperation in extradition and international sharing of information on the movements of capital and people – all infringements on sovereignty that may become increasingly acceptable by states if framed in terms of battling transnational crime.

States are beginning to cooperate to reduce tax evasion. The OECD has published a list of states that it identifies as “tax havens” which practice “harmful tax competition” (OECD 2000) with the expectation that greater transparency will put pressure on tax havens to change their ways. To a certain extent it has. In anticipation of the OECD report, Bermuda, Cayman Islands, Cyprus, Malta, Mauritius and San Marino made commitments to eliminate harmful tax practices by the end of 2005. In response, the OECD did not include their names in the report even though they currently qualify as tax havens according to OECD standards (OECD 2000).²⁶ If the richer and more powerful states of the world deem economic citizenship programs as enough of a nuisance, they could prod international organizations, such as the OECD, to

²⁶ See also http://www.oecd.org/daf/fa/harm_tax/harmtax.htm#Report

similarly publish lists and attempt to put pressure on states that utilize their sovereignty to sell citizenship.

A degree of "citizenship harmonization" has already taken place within the EU (see Koslowski 2000: 167-69). Spain has dual nationality agreements with most Latin American states, nationals from these states do not need visas to enter Spain and they have been able to gain access to the EU labor market via special accelerated naturalization provisions in Spain. Nationals of Portuguese-speaking countries and individuals of Portuguese descent can be exempted from Portugal's residency requirements for naturalization and those who do not have the requisite ancestry had been able to accelerate naturalization by virtue of purchasing property. Fellow EU member states have already pressured Portugal to curtail easy naturalization of foreigners who purchase property and Spain has been under pressure to stop preferential treatment of Latin Americans since the immigration of members of Colombian drug cartels. In his argument for a common European migration policy, Straubhaar notes this problem with individual member states taking a utilitarian approach to naturalization.

(A)n EU member state could 'sell' its national citizenship. The problem, however, is that according to the EC Treaty Art. 8 citizenship of the Union is granted along with national citizenship. This involves rights which other EU-member states might not wish to grant so easily to persons from third countries. It is to be expected that a number of EU member states would put up resistance to the - from their point of view - too thoughtless granting of Union citizenship by other EU-member states, particularly when Union citizenship involves an increasing number of rights (Straubhaar 2000, 7).

European Union citizenship also "increases" the value of member state nationalities by, for example, giving member state nationals the right to work anywhere in the EU. For example, the prospect of such access to the European labor market propelled the proposals to end Australia's policy of expatriating its nationals who naturalized or acquired another nationality. Many Australians thought that it was unfair that Americans who naturalized to Australia could

become dual nationals and enjoy its advantages while Australians of Irish descent who were eligible to acquire a second, Irish nationality could not. In this way, EU citizenship has made dual nationality with an EU member state more desirable, much in the way that exclusive property rights have in states such as Mexico. In this case, however, the policy prescription offered by Philip Martin, as described above, of eliminating differential treatment of non-nationals would involve not simply lifting prohibitions on property ownership but opening labor markets of fellow member states to non-nationals. This is a policy proposal that is not very viable politically – especially in periods of high unemployment.

While global efforts to stamp out the sale of citizenship may seem feasible in theory, it may be difficult for developed states that have perhaps the most to lose from such abuse of dual nationality to sanction developing states that offer economic citizenship programs. Given the U.S., Canadian, Australian and British policy on investor visa programs and the widespread practice of granting automatic citizenship to star athletes and residency to computer programmers (often from less developed states that provided their training and education), any initiative by large advanced industrial states of the north directed at economic citizenship programs of smaller developing states would mostly likely be viewed by a majority of the members of the United Nations as being somewhat hypocritical. An analogy can be drawn from the politics of the nuclear non-proliferation treaty (NPT). Aspiring nuclear powers view the NPT very differently than the long established nuclear powers that occupy the five permanent seats of the Security Council. Just as India and Pakistan had refused to sign the NPT if the U.S. and Russia would not commit themselves to nuclear disarmament and slash their existing nuclear arsenals, so developing states may be reluctant to sign an international agreement that would limit their ability to raise revenues if the U.S. and Canada would not also be willing to give up

their investor resident visa programs. Given all of the problems associated with the U.S. investor resident visa program, the United States may be prepared to abandon it²⁷ and thereby become eligible to lead international efforts to curb economic citizenship programs. Even if the United States were to give up investor based residency programs, it would have to first convince its Canadian, Australian and British partners within the G-8, OECD, U.N., etc. to do likewise in order for it to mount an effective campaign against economic citizenship programs.

As opposed to international cooperation aimed at limiting dual nationality through the elimination of economic citizenship programs, another approach would be for states that offer such programs to share information about their nationals with dual nationality so as to reduce possibility that individuals could use their second nationality to evade taxes or law enforcement officials. For some investors this would eliminate the appeal of these programs and, thereby, reduce dual nationality anyway. Nevertheless, it would be a way to ameliorate some of the most egregious abuses and leave economic citizenship programs intact for investors who are not acquiring a second nationality in order to circumvent the taxes or laws of the country of their first nationality. Likewise, states could agree on a multilateral basis to a set of rules for determining, given a certain set of circumstances, which state's law would be applicable to dual nationals. Such a regime could take economic citizenship programs and investor resident visa programs into account and provide frameworks for cooperation on the mutually agreed-upon taxation of dual nationals. Since this approach would not sanction states in the developing world for continuing to offer economic citizenship programs, there would be less of a necessity for developed states to give up their investor-based residency programs in order to campaign against abuses of citizenship laws in international fora, such as the United Nations.

²⁷ Comments made by David Martin at *Managing Dual Nationality* Meeting in Berlin, July 2000.

Double voting

Elsewhere, I have argued that the trend among states to permit dual nationality may be indicative of one dimension of a transformation of the international system into what Hedley Bull described as a secular "new medievalism" or "a system of overlapping authority and multiple loyalty."²⁸ Given that democracy has become the predominate means of political legitimization in today's world, a secular neo-medieval polity of overlapping authority and multiple loyalty faces a crucial challenge in its organization of democratic processes. Although individuals may be loyal to different state authorities with respect to different aspects of their lives, participation in existing *demoi* does not currently comport well with functionally differentiated sites of democratic decision-making. In practice, dual nationality raises the prospect of individuals voting in two states. Moreover, the confluence of two trends: spreading democratization and the easing of prohibitions on dual nationality means that the potential of double voting is growing rather significantly.

The practical political consequences of double voting in two states are not that significant as long as the number of dual nationals is relatively low. If, however, many individuals are able to follow the old adage of the Chicago Democratic political machine, "Vote early and often," their votes could, hypothetically, make a significant contribution to electing politicians in two states on the same side of certain policy issues. For example, U.S. - Canadian dual nationals might vote for pro-NAFTA politicians in both the U.S. and Canada. Although the number of US-Canadian dual nationals is small, the number of U.S. and Mexican nationals who may potentially become dual nationals has been estimated to be as many as 5 million. Very few have acquired dual nationality at this point and Mexican authorities are quick to point out that the amendment only permits retention (or the regaining) of Mexican *nationality* by those who

naturalize(d) to the U.S. – not *citizenship*. Those Mexicans who naturalized elsewhere would retain property rights and their passports but they would not have voting rights while residing abroad. Although Mexico’s ruling party, the PRI, approved separate legislation in 1996 that would permit Mexicans living abroad to vote in Mexican presidential elections (Lizarraga Chavez, 1997, p. 124), such legislation has not been enacted.

Again, increased international cooperation would be necessary to ensure voting in only one state. Much like voting registration in federations such as the U.S., a system could be devised so that voting registration is transferred when a dual national moves from one state to another. When a dual national registers to vote in the new state of residence, he or she would be obliged to identify the place in which he or she had previously voted or be subject to a penalty. The electoral officials from the new state of residence would then inform the dual national’s previous state of residence in order that he or she be removed from the electoral roles.

Such a system would be problematic without the cooperation of dual nationals because it would be difficult for states to identify them. Moreover, states rarely, if ever, notify each other when nationals of one state have naturalized to another. Although gathering and sharing information on dual nationals is administratively very difficult today, the development of government information technologies may make such tasks much easier in the not-too-distant future (See Koslowski forthcoming). Much as the linking of enterprise systems through the internet has led to a rapid growth of business-to-business e-commerce, public sector versions of these software packages have been developed that will enable governments to mine information from data warehouses and automate exchanges with other governments who do likewise.

²⁸ See Bull 1977 p. 254, as discussed in Koslowski 2000, ch. 7.

Within the next decade, the technical capabilities for states to gather and to exchange information regarding a dual national's residence will be available. The question is, however, will governments and the people who elected them use these capabilities? If such information would be gathered and exchanged and states would then be willing to deny political rights based on such information it would mark a further departure from traditional understandings of sovereignty.

Conclusion

The current trend among states to permit dual nationality undermines the demographic boundary regime based on international norms that have developed over the past century. If international cooperation to minimize dual nationality is coming to an end and it unlikely that unilateral initiatives within receiving states to stem the trend will be politically sustainable, increases in the number of dual nationals are likely. In a world where dual nationality is tolerated and even embraced by states, a corresponding increase in international cooperation regarding military obligations in cases of dual nationality, taxation, voting, etc. will become necessary in order to preempt the problems that prompted the development of international norms against dual nationality in the first place.

Provisions of the 1997 Council of Europe Convention regarding multiple military obligations provide an example for such frameworks for international cooperation. Other forms of international cooperation can be envisioned but for a variety of reasons, it seems unlikely that states will embark on such cooperative ventures in the immediate future. Nevertheless, it would behoove policymakers to begin to plan cooperative efforts to deal with a world with increasing dual nationality because, whether they like it or not, the number of dual nationals will increase.

References

Auslaenderbeauftragte 1997: *Facts and Figures on the Situation of Foreigners in the Federal Republic of Germany*. Bonn: The Federal Government's Commissioner for Foreigners' Affairs.

Bancroft, George 1849. Letter to Lord Palmerson, Jan. 26, 1849, reprinted in Sen. Ex. Docs. 38, 36th Congress, 1st Session. 160 (1860).

Bar Yaacov, Nissim, 1961. *Dual Nationality* (London: Praeger).

Bull, Hedley 1977: *The Anarchical Society: A Study of Order in World Politics*. New York: Columbia University Press.

Claude, Inis L. 1966. "Collective Legitimization as a Political Function of the UN, *International Organization*, 20, pp. 267-279.

Council of Europe 1963. "Convention on the Reduction of Cases of Multiple Nationality." *European Treaty Series* No. 43 (Strasbourg: Council of Europe).

Council of Europe 1996, "A Review of the Implementation of Community Relations Policies," by the Migration Policy Group, presented to the 6th Conference of European Ministers Responsible for Migration Affairs, MMG-6 (96) 1E, (Brussels: Migration Policy Group).

Council of Europe 1997: *European Bulletin on Nationality* DIR/JIR (97) 4, Strasbourg, March 1997.

Council of Europe 1997a: "European Convention on Nationality and Explanatory Report (Provisional)," DIR/JIR (97) 6. Strasbourg, 14 May 1997a.

Council of Europe 1997b: "European Convention on Nationality," *European Treaty Series*. No. 166. Strasbourg: Council of Europe.

de Groot, Gerard-Rene 2000. "The European Convention on Nationality: An Incentive for Approving to Access of Foreign Permanent Residents to Nationality," unpublished manuscript.

Dillon, Sam 1996: "Mexico Is Near to Granting Expatriates Voting Rights," *The New York Times*, June 16, 1996.

Fineman, Mark 1997: "West Indies islands put citizenship up for sale," *Los Angeles Times*, November 28, 1997.

Flournoy, Jr., Richard W. and Manley O. Hudson, eds., 1929. *A Collection of Nationality Laws of Various Countries as Contained in Constitutions, Statutes and Treaties* (New York: Oxford University Press).

Gallo, Roger 1999. "IRS Loses Bid to Track Overseas Tax-Dodgers," *Escape from America Magazine*, Vol. 1, No. 4, <http://www.escapeartist.com/efam3/efam3.htm>

Gazeta Wyborcza 1995. "Opole Conscripts Refuse Army Service," *Gazeta Wyborcza*, No. 140, June 19, 1995, p.2

Gettys, Luella 1934. *The Law of Citizenship in the United States* (Chicago, IL: The University of Chicago Press).

Geyer, Georgie Ann 1996. *Americans No More: The Death of Citizenship* (New York: Atlantic Monthly Press).

Hailbronner, Kay, 1992. *Einbuengerung von Wanderarbeitnehmern und doppelte Staatsangehoerigkeit* (Baden-Baden: Nomos).

Hammar, Tomas, 1985. "Dual Citizenship and Political Integration," *International Migration Review*, Vol. 19, No. 3 (1985), pp. 438-450

Hammar Tomas 1990, *Democracy and the Nation-State: Aliens, Denizens and Citizens in a World of International Migration* (Aldershot: Avebury).

Handlin, Lilian 1984. *George Bancroft: The Intellectual as Democrat* (New York: Harper & Row).

Harvard Law School 1929: "Nationality, Responsibility of States, and Territorial Waters, Drafts of Conventions Prepared in Anticipation of the First Conference on Codification of International Law, The Hague, 1930," *The American Journal of International Law*, Vol. 23, (Supplement).

ILC 1954: *International Law Commission Yearbook 1954 II*, Section 42, 48.

Kerry, John 1997. *The New War: The Web of Crime that Threatens America's Security* (New York: Simon & Schuster).

Korbin, Stephen 1997. "Electronic Cash and the End of National Markets," *Foreign Policy*, #107.

Koslowski, Rey 1998. "European Migration Regimes: Emerging, Enlarging and Deteriorating," *Journal of Ethnic and Migration Studies*, Vol. 23, No. 4 (Oct. 1998), 735-749.

Koslowski, Rey 2000. *Migrants and Citizens: Demographic Change in the European State System* (Ithaca, NY: Cornell University Press).

Koslowski, Rey 2000a. "Dual Nationality and Military Service: Changing International Norms and Policy Challenges," presented at *Dual Citizenship and Identity in the Global Context*, Institute for the Study of Economic Culture, Boston University, Saturday, May 6, 2000.

Koslowski, Rey Forthcoming. "Inviting the Global Elite In and Keeping the World's Poor Out: International Migration and Border Control in the Information Age," to be presented at the International Studies Association Meeting, Chicago, Feb. 20-24, 2000.

League of Nations 1930. "Hague Convention on Certain Questions relating to the Conflict of Nationality Laws (12 April, 1930), 179 *League of Nations Treaty Series*, 89.

League of Nations 1930a. "Military Obligations in Certain Cases of Double Nationality," 178 *League of Nations Treaty Series* 227.

League of Nations 1930b. "Special Protocol Concerning Statelessness," *U.K Treaty Series* No. 112.

League of Nations 1930c. "Certain Case of Statelessness," 179 *League of Nations Treaty Series* 116.

Lesperance, David S. 1999. "Your Passport Portfolio," *Escape from America Magazine*, Vol. 1, No. 2, http://www.escapeartist.com/efam/second_passport.htm

Lizarraga Chavez, Pablo 1997: "Creating A United States-Mexico Political Double Helix: The Mexican Government's Proposed Dual Nationality Amendment," *Stanford Journal of International Law*, Vol. 33, 119-151.

Mansfield, Edward D. and Jack Snyder 1995. "Democratization and the Danger of War," *International Security*, Vol. 20: 5-35.

Muus, Philip J. 1998: *Migration, Immigrants and Policy in the Netherlands: Recent Trends and Developments*. Report for the Continuous Reporting System of Migration (SOPEMI) of the Organization for Economic Co-Operation and Development.

Newsday 1997. "Extradition Divides Israel, U.S.," *Newsday* October 4, 1997.

OECD 1995, *SOPEMI Trends in International Migration, Annual Report 1994* (Paris, OECD, 1995).

OECD 2000. *Toward Global Tax Co-operation: Report to the 2000 Ministerial Council Meeting and Recommendations by the Committee on Fiscal Affairs, Progress in Identifying and Eliminating Harmful Tax Practices* (Paris: Organization for Economic Co-operation and Development).

Oezdemir 1996, Presentation by Cem Oezdemir at "Immigration, Incorporation and Citizenship in Advanced Industrial Democracies," the German American Academic Council, Summer Institute, New School for Social Research July, 17-27, 1996.

O'Nes, D. 1990. *The Guide to Legally Obtaining A Foreign Passport* (New York: Shapolsky Publishers, Inc.), pp. 107-110.

PAP 1995. "Poles Serving in Bundeswehr Will Not be Prosecuted," Polish Press Agency, News Wire, July 12, 1995.

National Post 1999. "Canadian Kosovars, Serbs Who Enlisted in War Get Reprieve," *The National Post*, October 26, 1999.

Roche Walter F. and Gary Cohen 2000. "INS Insiders Profit on Immigrant Dreams," *Baltimore Sun*, Feb 20, 2000.

Rumpf, Christian 2000. "Citizenship and Multiple Citizenship," presented at *Managing Dual Nationality*, Berlin, July 14-15, 2000

Schuck, Peter H. 1989. "Membership in the Liberal Polity: The Devaluation of American Citizenship," in Rogers Brubaker, ed., *Immigration and the Politics of Citizenship in Europe and North America* (Lanham MD: University Press of America).

Schuck, Peter H. 1998. "The Re-Evaluation of American Citizenship," in Christian Joppke, ed., *Challenge to the Nation-State: Immigration in Western Europe and the United States* (Oxford University Press, 1998).

Spiro, Peter J. 1997. "Dual nationality and the Meaning of Citizenship," *Emory Law Journal* Vol. 46, pp. 1412-1485.

Starchild, Adam 1993. *Second Passports and Dual Nationality* (Baltimore, MD: Agora,).

Straubhaar, Thomas 2000. "Entries into the German Labor Market: From National Front, Back, and Side Doors to a NEMP - a New European Migration Policy," prepared for the "Magnet Societies" Conference, Loccum, Germany, June 14-18, 2000
<http://www.smu.edu/~tower/Straubhaar.html>

Szymborski, Filip 2000. "Polish Citizenship: Amendment Eases Restoration," *The Warsaw Voice*, July 16, 2000.

Thompson, Allan 1999. "Canada Eyes Prosecuting Volunteers," *The Toronto Star*, May 27, 1999.

TWIG 1995, *This Week In Germany*, April 21, 1995.

